IN THE HIGH COURT OF DELHI

RSA Nos. 119/2002 & 120/2002

Sh. K.K.Mehrotra .....Appellant
! through: Mr. Mohar Singh, Advocate

VERSUS

$ Smt. Rattan Prabha ..... Respondent
^ through: Ms. Neelam Rathore, Advocate

RESERVED ON: 23.11.2007

% DATE OF DECISION: 29.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The above two captioned second appeals are filed by the same appellant K.K.Mehrotra and arise out of a common judgment and decree dated 18.5.2002 passed by the Additional District Judge, Delhi whereby judgment and decree for declaration and permanent injunction passed by the Civil Judge, Delhi on 18.12.1999 in favour of the appellant was set aside and suit for possession filed by the respondent which was dismissed by the Civil Judge, Delhi was decreed.

2. Backdrop facts leading to the filing of the present appeals are that late Sh. Panna Lal Mehrotra (hereinafter referred to as the deceased) died on 24.3.1987 leaving behind his widow, Smt. Chandravati and 3 daughters. At the time of his death, deceased was the sole and the exclusive owner of the property bearing Municipal No. 133/134, Gali Batashan, Barsha Bullah, Chawri Bazar, Delhi (hereinafter referred to as the suit property).

3. Daughters of the deceased relinquished their share in the suit property in favour of their mother Smt. Chandravati.

4. Smt. Chandravati executed a sale deed dated 18.1.1989 transferring all her rights and interests in the suit property in favour of the respondent Smt. Ratan Prabha.

5. Thereafter the appellant i.e. Mr. K.K.Mehrotra who was the son of the brother of the deceased filed a suit bearing no.60/89 (new no.343/97) against Smt. Chandravati praying that the sale deed dated 18.1.1989 be declared as null and void and that Smt. Chandravati be restrained from transferring or alienating the suit property in favour of any other person including the respondent. Material allegations in the plaint were that:-

i). Appellant was the adopted son of the deceased

ii). Appellant was adopted by the deceased in the year

1951.

iii). Appellant is residing in the suit property since last 20-25 years. He was residing therein with the deceased and his family during the life time of the deceased. That even after the death of the deceased appellant continued to reside with his adoptive/foster mother i.e. Smt. Chandravati.

iv). Suit property was never partitioned.

v). Being legal heir of the deceased appellant is entitled to a share in the suit property.

vi) Sale deed dated 18.1.1989 executed by Smt. Chandravati alienating the suit property in favour of the respondent be declared null and void for the reason she was not the sole and exclusive owner of the property.

6. Simultaneously with the filing of the aforenoted suit by the appellant, the respondent also filed a suit bearing no.598/89 against the plaintiff praying that a decree for the possession of the suit property be granted in his favour. Material allegations in the said plaint were that:-

i). Smt. Chandravati is the sole and exclusive owner of the suit property.

ii). Appellant is not the adopted son of the deceased.

iii). Appellant forcibly took the possession of the first floor of the suit property.

iv). Respondent is the valid and legal purchaser of the suit property.

7. Both the parties led their evidence in support of their respective suits.

8. In order to establish that he was duly adopted by the deceased appellant examined himself. In his testimony appellant reiterated the stand taken in the plaint filed by him. No other witness was examined. It is noteworthy that natural parents of the deceased were alive at the time of the trial of the suit yet he chose not to examine them.

9. As regards documentary evidence only a settlement deed Ex.DW-1/A dated 10.9.1951 entered into between the deceased and his three brothers namely Ganga Sahai, Raj Narain and Madan Mohan was filed by the appellant. Settlement deed Ex. DW-1/A is in Dev Nagri Script. Relevant part of the translation of the said settlement deed reads as under:-

> "We Ganga Sahai s/o Lala Basant Rai ---- Ist Party and Raj Narain and Madan Mohan in person and guardian Manmohan minor son own ..... Third Party and Panna Lal in person guardian Krishan Kumar minor adopted minor son own s/o Lala Ganga Sahai Caste Khatri r/o Bullanshahar."

10. Apart from the settlement deed dated 10.9.1951 no other document was proved.

11. In so far as evidence of respondent is concerned she

examined one Mr. Vinod Kumar who is the attorney and husband of the respondent. Vinod Kumar deposed that he was the neighbourer of Chandravati and that he was on visiting terms with her. He further deposed that the appellant has been residing in the suit property since 20-25 years. However when questioned about the relationship of the appellant with the deceased and his family he pleaded ignorance.

12. Noting the aforenoted settlement deed Ex.DW-1/A and testimony of Vinod Kumar that he is not aware about the relationship of the appellant with the deceased and his family even though he was the neighbourer and was on visiting terms with Chandravati, vide decision dated 18.12.1999 the learned Trial Court has held that the appellant has been able to successfully establish that he is the adopted son of the deceased. A decree for declaration and permanent injunction as prayed for by the appellant in suit no.60/1989 (new no.343/97) was granted by the Trial Court. The suit bearing no.598/89 filed by the respondent for possession of the suit property was dismissed.

13. Against the judgment and decree dated 18.12.1999 passed by the learned Trial Court, two appeals bearing Nos. RCA No. 12/2000 and RCA No. 13/2000 were filed by the respondent. RCA No. 12/2000 was directed against the

decision of the trial court in suit no.60/89 granting a decree for declaration and permanent injunction in favour of the appellant. RCA No. 13/2000 was directed against the decision of the trial court order dismissing suit no.598/89 filed by the respondent for the possession of the suit property.

14. Holding that the burden to prove the adoption of the appellant by the deceased was on the appellant and that he failed the discharge the same, vide decision dated 18.5.2002 the learned Appellate Court allowed the appeals of the respondent. In RCA No.12/2000 the appellate court set aside the decree of declaration and permanent injunction passed by the Trial Court in favour of the appellant in suit no.60/89. In RCA No.13/2000 the appellate court granted a decree for possession of the suit property as prayed for by the respondent in suit no.598/1989.

15. Aggrieved by the judgment and decree dated 18.5.2002 passed by the learned Appellate Court, the appellant has filed the present two second appeals. RSA No.119/02 is directed against the decision of the appellate court in RCA No.12/2000. RSA No.120/02 is directed against the decision of the appellate court in RCA No.13/2000.

16. At the hearing held on 23.11.2007 under-noted substantial question of law was framed by this court:-

> "Whether in view of Ex. EW-1/A finding returned by the first Appellate Court that there is no sustainable evidence to conclude that appellant was the adopted son of late Panna Lal is correct?"

17. On the standard of proof to establish adoption, in the decision reported as AIR 1959 SC 504 *Kishori Lal Vs. Mst. Chaltibai* the Supreme Court observed as under:-

> "As an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth. Failure to produce accounts, in circumstances such as have been proved in the present case, would be a very suspicious circumstance. The importance of accounts was emphasised by the Privy Council in Sootrugun v. Sabitra ((1834) 2 Knapp. 287); in Diwakar Rao v. Chandanlal Rao ((1916) I.L.R. 44 Calcutta 201 (P.C.); in Kishorilal v. Chunilal ((1908) 36 I.A. 9); in Lal Kunwar v. Charanji Lal ((1909) 37 I.A. 1, 7) and in Padamlal v. Fakira Debya (A.I.R. 1931 (P.C.) 84)."

18. In the decision reported as AIR 1987 SC 962 *Rahasa Pandiani (Dead) by L.Rs. And Ors. Vs. Gokulananda Panda & Ors.* the Supreme Court gave a warning to be careful in dealing with the cases of adoption. In this judgment the earlier judgment of the Supreme Court in the case of *Kishori Lal* (supra) was quoted with approval. In the said judgment it was observed as under:-

> "As an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative

strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth. Failure to produce accounts, in circumstances such as have been proved in the present case, would be a very suspicious circumstance. The importance of accounts was emphasised by the Privy Council in Sootragun v. Sabitra; in Diwakar Rao v. Chandanlal Rao; in Kishorilal v. Chunilal; in Lal Kunwar v. Charanji Lal and in Padamlal v. Fakira Debya."

19. The Supreme Court further observed as under:-

"... Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious Will, and equally, if not more difficult to unmask. And the court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a Will, there have been spurious claims about adoption having taken place. And the court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the court and the conscience of the court is not satisfied that the evidence preferred to support such an adoption is beyond reproach."

20. It is well established principle of law that onus lies upon the person who seeks to displace the natural succession

by alleging adoption. When the question arises whether there has been adoption in a particular case, the conduct of the parties both before and after adoption, the attendant and antecedent circumstances, the existence or absence of any writing with reference to adoption and any previous adjudication in the matter by the Court would be relevant.

21. An essential condition of a valid adoption is performance of ceremony of giving and taking of the adopted child by the natural and foster parents.(See the decision of the Supreme Court in the decision reported as AIR 1961 SC 1378 *Lakshman Singh Kothari v Smt. Rup Kanwar* and Section 11(6) of the Hindu Adoption and Maintenance Act).

22. But it is not possible in every case to lead oral evidence of giving and taking to prove adoption and more particularly in the case of an adoption alleged in the distant past. In case of an adoption in the distant past it is very difficult to get direct evidence for the reasons the persons who actually witnessed the adoption may not be in the world of living at the time when the issue of adoption has arisen before the Court.

23. In the decision reported as AIR 1970 SC 1286 *Debi Prasad Vs. Smt. Tribeni Devi* while considering the issue pertaining to burden of proof and mode of appreciation of evidence in case of an adoption in the distant past, the

Supreme Court observed as under:-

> “There is no doubt that the burden of proving satisfactorily that he was given by his natural father and received by Gopal Das as his adoptive son is on Shyam Behari Lal. But as observed by the Judicial Committed1 of the Privy Council in Rajendrao Nath Holder v. Jogendro Nath Benerjee and Ors. 14 Moore's Indian Appeals p. 67 that although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained, and that the case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time, and afterwards impeached by a party, who had a right to question the legitimacy, where the defendant, in order to defend his status, is allowed to invoke against the claimant every presumption which arises from long recognition of his legitimacy by members of his family; that in the case of a Hindoo, long recognition as an adopted son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In Rup Narain and Anr. v. Mst. Gopal Devi and Ors. 36 I.A. p. 103 the Judicial Committee observed, that in the absence of direct evidence much value has to be attached to the fact that the alleged adopted son had without controversy succeeded to his adoptive father's estate and enjoyed till his death and that documents during his life and after his death were framed upon the basis of the adoption. A Division Bench of the Orissa High Court in Balinki Padkano and Anr. v. Gopalkrishna Padhano and Ors. AIR 1964 ORI 117 held that in the case of an ancient adoption evidence showing that the boy was treated for a long time as the adopted son at a time when there was no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming. We are in agreement with the views expressed in the decisions referred to above.
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> In the case of all ancient transactions, it is but natural

that positive oral evidence will be lacking. Passage of time gradually wipes out such evidence. Human affairs often have to be judged on the basis of probabilities. Rendering of justice will become impossible if a particular mode of proof is insisted upon under all circumstances. In judging whether an adoption pleaded has been satisfactorily proved or not, we have to bear in mind the lapse of time between, the date of the alleged adoption and the date on which the concerned party is required to adduce proof. In the case of an adoption said to have taken place years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no predetermined way of proving any fact. A fact is said to have been proved where after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Hence if after taking an overall view of the evidence adduced in the case, we are satisfied that the adoption pleaded is true, we must necessarily proceed on the basis, in the absence of any evidence to the contrary, that it is a valid adoption as well."

24. In the decision reported as *Moti Lal Vs. Sardar Mal & Ors.* AIR 1976 Rajasthan 40 the Rajasthan High Court observed as under:-

"It has been laid down in several cases that after a lapse of long years, it is likely that the evidence of adoption may not be available and it may become difficult to find any witness who had eye-witnessed the ceremony of actual giving and taking in adoption. In such cases if the party alleging adoption adduces some evidence of the factum of adoption, it may be regarded as sufficient to shift the burden on the other side to prove that fee adoption did not take place. In such cases of old adoption, a presumption in favour of the validity of the adoption is naturally drawn from

> the status of the adopted son in the adopting family and its recognition by the members of the family for a number of years. Reference in this connection may fee made to the following authorities wherein due weight has been given to all the inferences and presumptions which may arise from such status of the adopted person and its recognition : Nand Kashore v. Brij Behari, ILR (1954) 4 Raj 822 = (AIR 1955 Raj 65), Mt. Binda Kuer v. Lalita Prasad, AIR 1936 PC 304, Seetharama Chandra Row v. Kanchumarthi Raju. AIR 1925 PC 201, Rajendro Nath v. Jogendro Nath, (1870) 14 Moo Ind. aPP 67 (PC) and Kailash Chandra Nag v. Bejoy Chandra Nag., AIR 1923 Cal 18."

25. Division Bench of the Madhya Pradesh High Court has also considered this issue in the case of *Surajbai Vs. Sadashiv Jugal Kishore* AIR 1958 MP 100 and held that where alleged adoption is an old one and has taken place many years ago strict proof of giving and taking or performance of the ceremonies necessary to constitute valid adoption is not necessary. It was further held that even very slight evidence establishing that alleged adopted son has been treated as such for long series of years by the foster family is sufficient proof in cases of old adoptions.

26. The Madhya Pradesh High Court in the afore said case had relied on a judgment in the case of *Dal Bahadur Singh Vs. Bijai Bahadur Singh* AIR 1930 PC 79 wherein the Privy Court' has held that onus of proving the adoption is on the part of setting it up but it is also true that if the plaintiff's adoption is old one and the plaintiff has been treated as adopted son by

the member of the family and in public transaction then presumption arises in his favour.

27. In the decision reported as AIR 1976 Ori 43 *Gouranga Sahu & Ors v Bhaga Sahu & Anr* the Orissa High Court observed as under:-

> "Though the normal rule is that one who seeks to deflect the natural line of succession to property by alleging adoption must discharge that burden, in eases of ancient adoption every allowance for the absence of evidence to prove such fact must be favourably entertained and where there is long lapse of 36 years between the adoption and the time of its being questioned and during that period of interregnum a variety of transactions of open life and conduct on the footing that the adoption was a valid act have taken place, the initial burden necessarily shifts to the person who challenges its validity."

28. But while considering evidence pertaining to adoption in the distant past where natural parents of the person claiming to be given in adoption are alive, it is desirable to examine the natural parents and if they are not examined an adverse inference could be drawn against the person claiming to be given in adoption.

29. To put it pithly, law requires best evidence to be brought on record.

30. In the decision reported as *Jogendra Vs. Jahaja Baliar Singh* AIR 2007 Orissa 142 it was observed that in order to establish factum and validity of an adoption it is always desirable to examine natural parents of the adopted child.

31. In the decision reported as *Sita Ram Vs. Shankar Lal* 2007 (1) AWC 357 the Allahabad High Court has held that where natural parents are not examined and there is no justifiable cause for such non examination, the courts must draw an adverse inference against the person who sets up the claim of adoption.

32. In the instant case the appellant did not examine his natural parents event though they were alive during the trial of the suits in question. No explanation has been given by the appellant as regards non examination of his natural parents.

33. In the instant case save and except the settlement deed Ex.DW1/A there is no other evidence showing that the appellant was either treated as son of the deceased or member of the family of the deceased. Even the said settlement deed does not clearly records that the appellant was the adopted son of the deceased.

34. As regards the fact that the appellant was residing with the deceased and his family since last 20-25 years is concerned, suffice would it be to note that the appellant was the son of the brother of the deceased. It is quite common in Indian society that nephews reside with their uncles. Thus, the mere fact that he was residing with the deceased does not

establish that the deceased or his family treated him as their adopted son.

35. Appellant could have successfully established his relationship with the deceased and his family by getting examined relatives, friends and neighbours of the deceased and his family. But no such evidence was led by the appellant.

36. Documents such as ration card etc. could have been placed on record by the appellant to establish that he was the adopted son of the deceased. Ration card if filed would have been a clinching evidence clearly establishing the relationship of the appellant with the deceased and his family.

37. In view of above discussion I thus hold that that the appellant has not been able to prove by leading positive and acceptable evidence that he was the adopted son of the deceased. The solitary evidence of settlement deed Ex.DW1/A dated 10.9.1951 does not meet the legal requirements relating to proof of an adoption.

38. The judgment and decree dated 18.5.2002 passed by the learned Appellate Court is affirmed.

39. There is no merits in the appeals.

40. The same are dismissed.

41. No costs.

November 29, 2007 PRADEEP NANDRAJOG, J.
MM